

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

REBECCA KITCHENS,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, and  
MARY OYELEYE, DMD,

Defendants.

**8:24CV37**

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendant's motion to set aside the order allowing service by publication, [Filing No. 42](#). [Filing No. 43](#). The motion is denied.

[Federal Rule of Civil Procedure 4\(e\)](#) states that a plaintiff may serve a defendant by following the law of the state in which the district court is located, in this case, Nebraska. Nebraska law permits service by publication "[u]pon motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute." [Neb. Rev. Stat. § 25-517.02](#). Plaintiff previously filed a motion for alternate service alleging the necessity for service by publication due to her inability to serve defendant Mary Oyeleye by personal service or mail. [Filing No. 41](#). She has now supported that motion with an affidavit from her attorney in accordance with [Neb. Rev. Stat. § 25-517.02](#), demonstrating the necessity for alternate service. [Filing No. 46](#). Specifically, Plaintiff's counsel avers he has been unable to locate a valid address for serving process on Oyeleye, despite numerous searches, inquiries, and unsuccessful attempts.

Accordingly, Plaintiff has demonstrated that service by publication is warranted in this case. Defendant's motion to set aside the special master's order allowing service by

publication is denied. Plaintiff is permitted to proceed with serving Oyeleye by publication as previously ordered.

IT IS ORDERED:

1. Defendant's motion to set aside, [Filing No. 43](#), is denied.
2. Plaintiff may proceed with service by publication as previously ordered.

Dated this 13th day of May, 2024.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge